

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

SHAIN ALLEN SMITH

PLAINTIFF

v.

3:19-cv-00369-BSM-JJV

JOHN COWVEY, Chief Deputy,
Salem Police Department, *et al.*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Brian S. Miller. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in a waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a new hearing for this purpose before either the District Judge or Magistrate Judge, you must, at the time you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the new hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The details of any testimony desired to be introduced at the new hearing in the form

of an offer of proof, and a copy or the original of any documentary or other non-testimonial evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Shain Allen Smith ("Plaintiff") has filed a *pro se* Complaint, pursuant to 42 U.S.C. § 1983, alleging Defendants violated his constitutional rights. (Doc. No. 2.) On January 2, 2020, I entered an Order giving Plaintiff thirty (30) days to either pay the \$400 filing fee in full or file an Application to Proceed *In Forma Pauperis*. (Doc. No. 3.) I provided Plaintiff with the necessary forms and cautioned him I would recommend dismissal if he did not timely comply with my instructions. (*Id.*) My Order has been returned undelivered because Plaintiff is no longer in the Fulton County Jail, and he has not maintained a current mailing address with the Clerk as required by Local Rule 5.5(c)(2). (Doc. No. 5.)

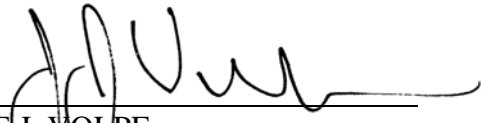
Plaintiff's time to comply with my January 2, 2020 Order has expired. Without a current address, it would be futile to give him an extension of time to comply with my instructions. Thus, this case should be dismissed without prejudice due to a lack of prosecution. *See* Fed. R. Civ. P. 41(b); Local Rule 5.5(c)(2).

IT IS, THEREFORE, RECOMMENDED THAT:

1. The Complaint (Doc. No. 2) be DISMISSED without prejudice.
2. The Court certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis*

appeal from an Order adopting this recommendation and the accompanying Judgment would not be taken in good faith.

DATED this 5th day of February 2020.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE